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EXAMINER	
DOAN, ROBYN KIEU	

ART UNIT	PAPER NUMBER
3732	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/764,279	KUGLEN, FRANCESCA B.	
	Examiner	Art Unit	
	Robyn Doan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 October 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *26-28* is/are allowed.

6)☒ Claim(s) *1-15,17-25 and 29-31* is/are rejected.

7)☒ Claim(s) *16* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *10/5/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant's Amendment filed 10/5/2007 has been entered and carefully considered. Claims 1, 15, 21, 23, 29 have been amended. Limitations of amended claims have not been found to be patentable over prior art of record, therefore, claims 1-15, 17-25, 29-31 are rejected under the same ground rejections as set forth in the office action mailed 4/3/2007.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruffio (U.S. Pat. # 1,665,380).

With regard to claim 1, Ruffio discloses a hair retainer (fig. 2) comprising two opposed combs (13), each of the combs having a spine (11) defining the width of the comb and parallel comb teeth (at 13) projecting from the spine; a stretchable elastic mesh (10, col. 2, lines 57-58, 71-72, fig. 2) secured between the spines of the combs tp produce tension between the combs when combs are moved away from each other, the elastic mesh having a width comparable to the width of the combs (Applicant is noted that the ends 10b of the mesh having a substantially width comparable to the width of

the comb) and being formed by elastic strands (it is noted that a plurality of elastic strands woven together to form a mesh) extending between the spines of the combs so as to form stretchable openings (col. 2, line 72 shows the device being formed of coarse mesh, therefore, it shows openings) which inherently can individually be stretched open so that an amount of the wearer's hair is capable to be pulled if desired. In regard to claim 6, the elastic mesh being formed by interconnected elastic strands (see fig. 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruffio.

With regard to claims 3 and 4, Ruffio disclosed the essential claimed except for the elastic strands being secured at spaced intervals to the spines of the opposed combs and the stretchable openings being triangular shapes. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the elastic strands being secured at spaced intervals to the spines of opposed combs and the stretchable openings being triangular shapes, since such a modification would have involved a mere change in the location and the shape of the component.

Claims 2, 5 and 12-14, 21, 22, 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruffio in view of JP Pat. # 409299131A.

With regard to claim 2, 5 and 12-14, 21, 29-31, Ruffio discloses a hair retainer comprising all the claimed limitations in claim 1 as discussed above except for the opposed combs being wire combs with metal spine and a row of looped wires to form projecting teeth; the length of the elastic mesh being between about three and one-half to four inches; the width of the combs and elastic mesh being between about three to four inches and the stretchable openings of the elastic mesh being of at least two different sizes. JP '131 discloses a comb (fig. 1) comprising a metal spine and a row of looped wires forming projecting teeth (5). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the particular comb as taught by JP '131 into the hair retainer of Ruffio in order to provide flexibility to the teeth of the combs so they can easy to guide through the hair of the user. It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the length of the elastic mesh being between about three and one-half to four inches and the width of the combs and elastic mesh being between about three to four inches and the stretchable openings of the elastic mesh being of at least two different sizes, since such a modification would have involved a mere change in the size of the known component. A change in size is generally recognized as being within the level or ordinary skill in the art. In re Rose, 105 USPQ

237 (CCPA 1955). In regard to claim 22, Ruffio in view of JP '131 fail to show eight strands being secured at spaced intervals along the spines of the opposed combs and interconnected to form the elastic mesh between the combs. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct eight strands being secured at spaced intervals along the spines of the opposed combs and interconnected to form the elastic mesh between the combs, since such a modification would have involved a mere change in the size of the known component. A change in size is generally recognized as being within the level or ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Claims 7-9, 15, 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruffio in view of Lorbiecki (U.S. Pat. # 1,564,079).

With regard to claims 7-9, 15 and 23-24, Ruffio fails to show the elastic strands being substantially clear and connector beads interconnecting the filament strands to form a decorative woven elastic mesh. Lorbiecki discloses a hair net (fig. 2) comprising a beaded mesh (fig. 2) comprising connector beads (8) interconnecting filament strands (3, 4) to form a decorative oven mesh (fig. 2). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the connector beads as taught by Lorbiecki into the hair retainer of Ruffio for the purpose of enhancing attractiveness of the net when is worn by a person. It would also have been an obvious matter of design choice to construct the filament strands being substantially clear, since such a modification would involved a mere change in the matter of design choice.

Claims 10-11 and 17-19, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruffio in view of Lorbiecki as applied to claim 9 above, and further in view of Moffat (U. S. Pat. # 5,154,196).

With regard to claim 10-11 and 17, Ruffio in view of Lorbiecki discloses a hair retainer comprising all the claimed limitations in claims 9 and 15 as discussed above except for intermediate beads on the elastic strands between the connector beads and wherein the number of intermediate beads between each connector beads being substantially the same; Ruffio in view of Lorbiecki fail to show the elastic strands being threaded back and forth between the spines to produce eight strand segments woven through the connector beads. Moffat discloses a hair accessory (fig. 1) comprising two opposed clips (40) and a mesh member (10) extending between the clips, the mesh member having filament strands (32) and connector beads (40, see attachment A) and intermediate beads (40, see attachment A) between the filament strands and the connector beads, the number of intermediate beads between each connector beads being substantially the same (fig. 1). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the intermediate beads as taught by Moffat into the hair retainer of Ruffio in view of Lorbiecki for the purpose of providing an aesthetic look to the device. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the eight strand segments, since such a modification would involved a mere change in the design of the known component. (Applicant is also noted that prior art has shown the

structure of the elastic mesh, the process of making it such as "threaded back and forth" is not given patentable weight in the article claim). In regard to claims 18-19, Ruffio in view of Lorbiecki and further in view of Moffat fail to show the shapes, colors and sizes of the connector, intermediate beads being selected and mixed to produce a desire decorative effect and the intermediate beads surrounding the connector beads being larger than other intermediate beads to accentuate the interconnections of the elastic mesh. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the shapes, colors and sizes of the connector, intermediate beads being selected and mixed to produce a desire decorative effect and the intermediate beads surrounding the connector beads being larger than other intermediate beads to accentuate the interconnections of the elastic mesh, since such a modification would have involved a mere change in the shape, size, color of the known components. A change in shape, size and color is generally recognized as being within the level or ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruffio in view of Lorbiecki as applied to claim 15 above, and further in view of JP '131.

With regard to claim 20, Ruffio in view of Lorbiecki discloses a hair retainer comprising all the claimed limitations in claim 15 as discussed above except for the opposed combs being wire combs with metal spine and a row of looped wires to form projecting teeth; the length of the elastic mesh being between about three and one-half to four inches; the width of the combs and elastic mesh being between about three to

four inches and the stretchable openings of the elastic mesh being of at least two different sizes. JP '131 discloses a comb (fig. 1) comprising a metal spine and a row of looped wires forming projecting teeth (5). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the particular comb as taught by JP '131 into the hair retainer of Ruffio in order to provide flexibility to the teeth of the combs so they can easy to guide through the hair of the user.

Allowable Subject Matter

Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 26-28 are allowable over prior art of record.

Response to Amendment

The affidavit under 37 CFR 1.132 filed 10/5/2007 is insufficient to overcome the rejection of claims 1-15, 17-25, 29-31 based upon the prior art of record as set forth in the last Office action because: Nexus requirement and any secondary evidence must be related to the claimed invention (see MPEP 716.01 (b)); the evidence of the secondary considerations must be relevant to the subject matter as claimed and nexus between the merits of the claimed invention and the evidence of the secondary considerations.

Response to Arguments

Applicant has argued that the elastic material of Ruffio is incapable to be stretched to enlarge the openings so as an amount of hair to be pulled through. Applicant is noted that all the claimed structures have been shown, one skill in the art would recognize that any elastic material is capable to be stretched, how much the device being stretched and the sizes of the openings being stretched are not claimed and therefore, the device of Ruffio is capable to be stretched to allow an amount of hair to be pulled through.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner
Art Unit 3732

rkd
January 5, 2008